

# **EXHIBIT 34**

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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE DISTRICT OF NEW JERSEY

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5                 TAKEDA PHARMACEUTICAL                 )  
6                 COMPANY LIMITED, TAKEDA                 )  
7                 PHARMACEUTICALS NORTH                 )  
8                 AMERICA, INC., TAKEDA                 ) Civil Action No.  
9                 PHARMACEUTICALS LLC, TAKEDA             ) 3:11-CV-02506-  
10                PHARMACEUTICALS AMERICA,                 ) JAP-DEA  
11                INC., and ETHYPHARM, S.A.,             )  
12                Plaintiffs,                             )  
13                )  
14                vs.                                     )  
15                )  
16                MYLAN PHARMACEUTICALS,                 )  
17                INC.,                                     )  
18                Defendant.                             )  
19                )  
20                Reported By:  
21                CATHI IRISH, RPR, CLVS, CCR  
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<p style="text-align: right;">110</p> <p>1 MUMPER      2 suspended, or an ODT that was meant to      3 disintegrate in the mouth, that a slight      4 increase in viscosity would have a positive      5 attribute, like maybe a smoother, more      6 pleasant sensation, or again, aid in the      7 particles being suspended in the mouth just      8 prior to swallowing. So I don't think that      9 increasing viscosity for an ODT would always      10 be a bad thing.</p> <p>11 BY MS. CHOW:</p> <p>12 Q. In rendering your opinion as to the      13 purported indefiniteness of permits to obtain      14 reduced influence of viscosity, did you take the      15 prosecution history into account?</p> <p>16 A. Yes, I recall in the prosecution      17 history that this claim term was included to      18 differentiate the '632 claim from prior art that      19 was similar or perhaps the same invention but that      20 included an excipient that increased the      21 viscosity.</p> <p>22 Q. Like guar gum, right?</p> <p>23 A. Off the top of my head, I can't recall      24 specifically what excipient it was but I know it      25 was a viscosity increasing excipient.</p>	<p style="text-align: right;">112</p> <p>1 MUMPER      2 way to eliminate the prior art. The problem I      3 have with that is that the prior art included      4 an excipient that increased viscosity, and      5 that prior art as I recall had a number of      6 examples of a viscosity increasing agent, and      7 as we discussed earlier, the examples aren't      8 meant to embody the complete invention. So      9 inherent in that prior art was the addition of      10 the viscosity increasing agent so it could be      11 at many different levels. So how does one      12 know when practicing '632 if they would want      13 to, as required, reduce influence of viscosity      14 relative to the prior art? How much of that      15 excipient or lack of excipient would be needed      16 to have a reduced influence of viscosity?      17 That is an indefinite term and one that      18 scientifically would be very difficult to      19 arrive at in my opinion.</p> <p>20 BY MS. CHOW:</p> <p>21 Q. Do you understand that if there's a      22 claim term that you may not understand what it      23 means when you just read the claim, that the      24 prosecution history can shed light on the meaning      25 of that claim? Do you understand that concept?</p>
<p style="text-align: right;">111</p> <p>1 MUMPER      2 Q. Okay. What did you take from the fact      3 that during prosecution the patentee was      4 differentiating over prior art that included an      5 excipient that increased viscosity, what did you      6 take from that?</p> <p>7 A. What I took from that is that the '632      8 patent with respect to that claim element needed      9 to differentiate that specific claim or the claim      10 would have not been novel and awarded because      11 there was prior art that had already claimed every      12 element of claim 1 except for that viscosity term.</p> <p>13 Q. So you understood that it was      14 significant that the patentee had to include the      15 phrase "permits to obtain reduced influence of      16 viscosity" in order to overcome the prior art but      17 you still concluded that the claim term was      18 indefinite; is that right?</p> <p>19 MR. MUKERJEE: Objection as to      20 characterization of the witness's testimony.      21 You can answer.</p> <p>22 THE WITNESS: I still concluded that      23 this claim term "reduced influence of      24 viscosity" is indefinite. I recognize that      25 the '632 claim was being constructed in such a</p>	<p style="text-align: right;">113</p> <p>1 MUMPER      2 A. I believe I understand the concept that      3 you're trying to portray or trying to relay to me.      4 To me, that's probably analogous to teaching a      5 sustained-release agent but the prosecution      6 history reveals that it may be a cushioning agent,      7 so I think you're trying to make that correlation.      8 Q. Okay, well -- so when you rendered your      9 opinions as set forth in your declaration, did the      10 prosecution history influence any of your      11 conclusions?      12 A. Are you asking me with respect to this      13 term reduced pH influence? I'm sorry, reduced      14 influence of viscosity?      15 Q. Sure, I'll take that to start.      16 A. I think I just addressed that but let      17 me restate.      18 As I mentioned, I did look at the      19 prosecution history and the prior art that      20 included an agent that increased viscosity and      21 looked at what that taught and what it was doing.      22 I looked at the prosecution history. I understood      23 that '632, claim 1 was trying to move around that      24 prior art by having the term "reduced influence of      25 viscosity."</p>